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ACTION AF-00

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DODE-00	DOYE-00	SRPP-00	DS-00	EB-00	EUR-00	FAAE-00
FBIE-00	VC-00	H-01	TEDE-00	INR-00	IO-00	L-00
VCE-00	AC-01	NSAE-00	OIC-02	OMB-01	OPIC-01	PA-00
PC-01	PM-00	PRS-00	ACE-00	P-00	SP-00	SSO-00
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FM AMEMBASSY HARARE  
TO SECSTATE WASHDC IMMEDIATE 0643  
INFO NSC WASHDC IMMEDIATE  
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY  
AMEMBASSY NAIROBI

C O N F I D E N T I A L SECTION 01 OF 02 HARARE 000038

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JENDAYI FRAZER  
LONDON FOR CHARLES GURNEY  
PARIS FOR CHARLES NEARY  
NAIROBI FOR TERRY PFLAUMER

E.O. 12958: DECL: 01/04/12

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SUBJECT: LOSS OF TWO ZIMBABWE SUPREME COURT JUSTICES  
STRENGTHENS ZANU-PF'S INFLUENCE OVER BENCH

REFS: A) '01 HARARE 3631, B) '01 HARARE 2345,

C) '01 HARARE 766

CLASSIFIED BY POLITICAL OFFICER TODD FAULK FOR REASONS:  
1.5 (B) AND (D).

¶1. (C) SUMMARY: THE DECEMBER 27 DEATH OF SUPREME COURT JUSTICE SIMBARASHE MUCHECHETERE AND THE DECEMBER 31 RETIREMENT OF JUSTICE NICHOLAS MCNALLY BRINGS INTO QUESTION THE FUTURE ROLE OF WHAT HAS STOOD AS AN AFRICAN MODEL OF JUDICIAL INDEPENDENCE. ONLY TWO OF THE SIX REMAINING MEMBERS CAN BE DESCRIBED AS VERIFIABLY INDEPENDENT. CHIEF JUSTICE GODFREY CHIDYAUSIKU HAS ALREADY PROVEN HIMSELF AS AN INSTRUMENT OF ZANU-PF, AND THE ROLE OF THE REMAINING THREE JUSTICES REMAINS UNCLEAR, DESPITE INITIAL INDICATIONS THAT THEY TOO MAY BE FAVORABLE TO THE ZANU-PF AGENDA. HOW GROUPS PLANNING CONSTITUTIONAL CHALLENGES TO PENDING REPRESSIVE LEGISLATION FARE IN THEIR LEGAL CASES WILL CLARIFY THE ULTIMATE POSTURE OF THE BENCH. END SUMMARY.

LOSS OF TWO INDEPENDENTS

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¶2. (C) EARLY ON DECEMBER 27, SUPREME COURT JUSTICE SIMBARASHE MUCHECHETERE, AGE 57, DIED IN HIS BULAWAYO HOME, REPORTEDLY FROM MALARIA COMPLICATIONS. MUCHECHETERE'S SUDDEN DEATH CAME AS A SURPRISE BECAUSE HE WAS BELIEVED TO BE IN GOOD HEALTH. HE WAS WELL-REGARDED ON THE BENCH, ON WHICH HE HAD SERVED SINCE 1993, AND WAS GENERALLY VIEWED AS INDEPENDENT OF PARTY CONFIDENTIAL

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POLITICS. ON DECEMBER 31, JUSTICE NICHOLAS MCNALLY OFFICIALLY RETIRED FROM THE HIGHEST COURT AFTER REACHING THE MANDATORY RETIREMENT AGE OF 70. (NOTE: ZIMBABWEAN JUDGES NORMALLY MUST RETIRE AT 65, BUT IF THEY CAN DEMONSTRATE GOOD MENTAL AND PHYSICAL HEALTH TO A DOCTOR, THEY CAN STAY ON TO THE AGE OF 70, AFTER WHICH NO EXTENSION IS POSSIBLE. END NOTE.) IN FEBRUARY 2001, JUSTICE MINISTER PATRICK CHINAMASA ATTEMPTED TO FORCE MCNALLY INTO EARLY RETIREMENT -- AFTER SUCCESSFULLY DOING SO WITH CHIEF JUSTICE ANTHONY GUBBAY -- BUT MCNALLY RESISTED. MCNALLY WAS KNOWN LOCALLY FOR HIS RESPECT OF THE LAW. (NOTE: THE JANUARY 3 EDITION OF THE GOVERNMENT-CONTROLLED "THE HERALD" REPORTED THAT HIGH COURT JUDGE DAVID BARTLETT UNEXPECTEDLY RESIGNED ON DECEMBER 31; BARTLETT COULD LEAVE OFFICE AS SOON AS FEBRUARY 28. BARTLETT IS THE FOURTH HIGH COURT JUDGE TO RESIGN IN THE LAST YEAR. END NOTE.)

MUGABE IS CLOSER TO HAVING HIS IDEAL COURT

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¶3. (C) THE DEPARTURE OF TWO INDEPENDENT JUSTICES LEAVES THE ZIMBABWE SUPREME COURT UNDER THE INFLUENCE OF ZANU-

PF. MUGABE REPLACED GUBBAY WITH ZANU-PF SYCOPANT GODFREY CHIDYAUSIKU AND APPOINTED THREE NEW MEMBERS TO THE BENCH IN AUGUST 2001, EXPANDING THE BENCH FROM FIVE TO EIGHT MEMBERS. OF THE SIX REMAINING MEMBERS, ONLY TWO CAN BE DESCRIBED AS INDEPENDENT; THE OTHER FOUR ARE BEGINNING TO LOOK AMENABLE TO THE RULING PARTY'S LEGAL AGENDA. BELOW IS A SUMMARY OF WHAT WE KNOW ABOUT THE REMAINING SIX:

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-- CHIEF JUSTICE GODFREY CHIDYAUSIKU, AGE 54: FORMER JUDGE PRESIDENT OF THE HIGH COURT, BECAME ACTING CHIEF JUSTICE IN MARCH 2001 AFTER GUBBAY WAS FORCED TO RETIRE; OFFICIALLY APPOINTED IN AUGUST 2001. CHIDYAUSIKU'S LINKS TO ZANU-PF ARE WIDELY KNOWN: HE SERVED IN TWO DEPUTY MINISTERIAL POSITIONS IN THE EARLY 1980S AND WAS CHAIRMAN OF THE GOVERNMENT'S CONSTITUTIONAL COMMISSION IN 1999; OUR CONTACTS TELL US HE IS ALSO SLATED TO RECEIVE PROPERTY UNDER THE GOVERNMENT'S LAND REDISTRIBUTION PROGRAM. CHIDYAUSIKU WROTE THE DECEMBER 3, 2001 DECISION THAT ESSENTIALLY LEGALIZED THE GOVERNMENT'S SEIZURE OF COMMERCIAL FARMING PROPERTY (REF A). A GROUP OF BLACK ZIMBABWEAN LAWYERS CIRCULATED A LETTER BEFORE CHIDYAUSIKU'S APPOINTMENT CALLING HIM "MORALLY UNFIT" TO SERVE AS CHIEF JUSTICE AND CITED CASES OF WOMANIZING, PUBLIC OUTBURSTS, SEXUAL HARASSMENT, AND PHYSICAL ASSAULT.

-- JUSTICE MISHECK CHEDA: JUDGE OF THE BULAWAYO HIGH COURT FROM 1991 UNTIL HIS APPOINTMENT TO THE SUPREME COURT IN AUGUST 2001; SERVED AS PERMANENT SECRETARY FOR MINISTRY OF JUSTICE 1989-1991. CHEDA HAS BEEN DESCRIBED AS A SOUND JUDGE AND IS A FORMER CRITIC OF CHIDYAUSIKU'S PRO-GOVERNMENT RULINGS. HOWEVER, CHEDA WENT ALONG WITH

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	IO-00	L-00	VCE-00	AC-01	NSAE-00	OIC-02	OMB-01
	OPIC-01	PA-00	PC-01	PM-00	PRS-00	ACE-00	P-00
	SP-00	SSO-00	STR-00	TRSE-00	USIE-00	PMB-00	DSCC-00
	PRM-00	DRL-02	G-00	NFAT-00	SAS-00	SWCI-00	/009W

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FM AMEMBASSY HARARE  
TO SECSTATE WASHDC IMMEDIATE 0644  
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C O N F I D E N T I A L SECTION 02 OF 02 HARARE 000038

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THE DECEMBER LAND DECISION LEGALIZING FARM SEIZURES.

-- JUSTICE LUKE MALABA: JUDGE OF THE BULAWAYO HIGH COURT FROM 1994 UNTIL HIS APPOINTMENT IN AUGUST 2001; ONCE DESCRIBED AS ONE OF THE MOST CAPABLE LAWYERS IN MATABELELAND; HAS A STRONG HUMAN RIGHTS BACKGROUND, BUT SIGNED ONTO THE DECEMBER LAND RULING.

-- JUSTICE VERNANDA ZIYAMBI: THE FIRST FEMALE ZIMBABWE SUPREME COURT JUSTICE; FORMER JUDGE OF THE HARARE HIGH COURT. ZIYAMBI HAS SOMEWHAT WEAKER LEGAL CREDENTIALS THAN HER COUNTERPARTS, BUT IS REPORTED TO HAVE STRONG RELIGIOUS CONVICTIONS. ZIYAMBI'S HUSBAND WAS MINISTER OF JUSTICE UNTIL HE DIED IN A CAR ACCIDENT IN 1991. ZIYAMBI'S CHILDREN REPORTEDLY BLAME ZANU-PF FOR ORCHESTRATING HIS DEATH, BUT IT IS UNCLEAR WHETHER ZIYAMBI DOES AS WELL.

-- JUSTICE AHMED IBRAHIM, AGE 64: THE LONGEST-SERVING MEMBER OF THE CURRENT BENCH (SINCE 1990); THE MOST

PROMINENT MUSLIM IN ZIMBABWE AND PRESIDENT OF THE LOCAL ISLAMIC CULTURAL SOCIETY; WELL-KNOWN FOR HIS RESPECT OF THE LAW AND INDEPENDENT THINKING. IBRAHIM SERVED IN THE ATTORNEY-GENERAL'S OFFICE IN THE EARLY 1980S BEFORE HIS HIGH COURT APPOINTMENT IN 1984. JUSTICE MINISTER CHINAMASA ATTEMPTED TO STRONG-ARM HIM INTO RESIGNING IN FEBRUARY 2001 BUT INTERNATIONAL SUPPORT REPORTEDLY CONVINCED HIM TO STAY.

-- JUSTICE WILSON SANDURA, AGE 60: ON THE BENCH SINCE 1998, HE IS THE COURT'S MOST SENIOR BLACK MEMBER. HE  
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SERVED AS A HIGH COURT JUDGE BETWEEN 1983 AND 1997,  
INCLUDING AS JUDGE PRESIDENT FROM 1984. SANDURA IS  
WIDELY RESPECTED FOR HIS NON-PARTISAN READING OF THE LAW  
AND IS VIEWED AS ONE OF THE TWO LAST REMAINING  
INDEPENDENTS.

COMMENT: COURT UNDER ZANU-PF INFLUENCE

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14. (C) ONE OF THE MOST RESPECTED JUDICIAL INSTITUTIONS IN AFRICA AND ONE OF THE GOVERNMENT'S MOST OUTSPOKEN WATCHDOGS IS IN DANGER OF BECOMING A RUBBER STAMP FOR THE GOZ AND THE ZANU-PF RULING PARTY. THE DEPARTURE OF TWO INDEPENDENT JUSTICES PUTS MUGABE'S RECENT -- AND POSSIBLY MORE PLIABLE -- APPOINTMENTS IN A CLEAR MAJORITY ON THE BENCH. OUR SOURCES TELL US THAT CHIEF JUSTICE CHIDYAUSIKU IS LEANING ON THE JUNIOR COURT MEMBERS (CHEDA, MALABA, ZIYAMBI) TO PRODUCE THE RESULTS THAT MUGABE WANTS, I.E. LEGALIZATION OF LAND SEIZURES AND THE UPHOLDING OF REPRESSIVE LEGISLATION. AT LEAST TWO OF THESE NEW MEMBERS WHO APPEARED TO HAVE SOLID AND INDEPENDENT LEGAL CREDENTIALS (CHEDA AND MALABA), FELL UNDER CHIDYAUSIKU'S SWAY ON THE DECEMBER LAND RULING. IF MUGABE WANTS REPLACEMENT JUSTICES (THE CONSTITUTION STIPULATES THAT THE SUPREME COURT MUST HAVE AT LEAST FIVE MEMBERS, BUT PROVIDES NO MAXIMUM LIMIT), HE WILL HAVE NO TROUBLE INSTALLING REPLACEMENTS HE VIEWS AS SYMPATHETIC TO ZANU-PF'S CAUSES, WITH CHIDYAUSIKU AT THE HELM OF THE JUDICIAL SERVICE COMMISSION. HOWEVER, AT THIS POINT, THE PRESIDENT DOES NOT NEED REPLACEMENTS.

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15. (C) COMMENT CONTINUED: THE TRUE TEST OF THE "NEW" COURT'S LEANINGS WILL COME WHEN ORGANIZATIONS OPPOSED TO THE GOZ'S POLICIES INTRODUCE LEGAL CHALLENGES TO PROPOSED REPRESSIVE LEGISLATION. JOURNALIST GROUPS AND THE MDC ARE ALREADY PREPARING CONSTITUTIONAL CASES AGAINST THE ACCESS TO INFORMATION BILL AND THE PUBLIC ORDER AND SECURITY BILL, RESPECTIVELY. ALTHOUGH CHIDYAUSIKU DISMISSED THE GOVERNMENT'S INCITEMENT TO VIOLENCE CASE AGAINST MDC PRESIDENT MORGAN TSVANGIRAI, THE CHIEF JUSTICE GAVE THE GOVERNMENT AN "OUT" BY SAYING IT COULD CHANGE THE LAW TO LEGALLY PERMIT FUTURE ACTION AGAINST THE OPPPOSITION LEADER. EVEN IF THE SUPREME COURT JUSTICES BELIEVE THE REPRESSIVE LEGISLATION IS UNCONSTITUTIONAL, WHICH MOST LEGAL EXPERTS HERE AGREE THAT IT IS, CHIDYAUSIKU IS LIKELY TO PRESSURE HIS COLLEAGUES INTO ISSUING EQUIVOCAL RULINGS, OR POSTPONING THEM ALTOGETHER. END COMMENT.

SULLIVAN

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